

First Run, Inc. and District 17, United Mine Workers of America. Case 9-CA-29436

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On September 25, 1992, the National Labor Relations Board issued a Decision and Order,¹ *inter alia*, ordering First Run, Inc., to make whole all unit employees for any losses they may have suffered as a result of its failure since at least September 25, 1991, through December 20, 1991, to continue in effect certain terms and conditions of the 1988 National Bituminous Coal Wage Agreement in effect between the Respondent and the United Mine Workers of America, in violation of Section 8(a)(1) and (5) and Section 8(d) of the National Labor Relations Act. On December 23, 1992, the United States Court of Appeals for the Fourth Circuit enforced the Board's Order.

A controversy having arisen over the amounts due its employees, on May 3, 1993, and May 21, 1993, the Regional Director for Region 9 issued a compliance specification and notice of hearing and an amended compliance specification and notice of hearing, respectively, alleging the amounts due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification and amended compliance specification, the Respondent has failed to file an answer.

By letter dated July 20, 1993, counsel for the General Counsel advised the Respondent that no answer to the compliance specification had been received and that if an answer was not received in the Regional Office by close of business July 26, 1993, a Motion for Summary Judgment would be filed. The Respondent filed no answer.

On August 16, 1993, the General Counsel filed with the Board a motion to transfer proceedings to the Board and a Motion for Summary Judgment and memorandum in support, with exhibits attached. On August 20, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specifica-

tion. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification and amended compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the amended compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the net back-pay due the discriminatees is as stated in the amended compliance specification and we will order payment by the Respondent.

ORDER

The National Labor Relations Board orders that the Respondent, First Run, Inc., Switzer, West Virginia, its officers, agents, successors, and assigns, shall make whole the individuals named below, by paying them the amounts following their names, with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and state laws:

	<i>Backpay</i>	<i>Medical Expenses</i> ²
Buford D. Tackett	\$1,036.32	-0-
Don Conn	2,209.32	-0-
Billy N. Adkins	2,778.23	\$1,800

Dated, Washington, D.C. September 22, 1993

James M. Stephens, Chairman

Dennis M. Devaney, Member

John Neil Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

²The medical expenses awarded Adkins do not constitute income and, therefore, are not taxable.

¹ 308 NLRB No. 142.